

AGE UK EXETER

Controlled Document

Document Name: Mental Capacity Act Policy

Document Version Number: 1

Agreed by Risk and Quality Committee: Discussed 16.03.23

Approved by Board of Trustees on: 11.04.23

Review Schedule: Every three years

Next review due: April 2026

Owner (Responsibility) CEO

Amendments to: Governance Officer

Revision History: See end of document

Document location: www.ageuk.org.uk/exeter/about-us/policiesandguidelines

Document Description

This document details our commitment at Age UK Exeter to promote the welfare of adults by ensuring the principles of the Mental Capacity Act (2005) are embedded into practice. We aim to do this by ensuring that we comply with the MCA Code of Practice (2007).

Implementation and Quality Assurance

Implementation is immediate and this Policy shall stay in force until any alterations are formally agreed.

The Policy will be reviewed every three years by the Board of Trustees, sooner if legislation, best practice, or other circumstances indicate this is necessary.

All aspects of this Policy shall be open to review at any time. If you have any comments or suggestions on the content of this policy, please contact the CEO on info@ageukexeter.org.uk or at Age UK Exeter, The Sycamores, Mount Pleasant Road, Exeter, EX4 7AE, 01392 202092.

Mental Capacity Act Policy

1. Introduction

Our mission at Age UK Exeter is "to enable local older people to get the most from life whatever their circumstances." We are committed to listening to older people, empowering them to make their own decisions where possible, and protecting people who lack capacity by implementing the Mental Capacity Act (2005) and translating it for practice here.

The Mental Capacity Act (MCA) applies to individuals over the age of sixteen. It is designed to empower and protect people who may lack the mental capacity to make their own decisions about their care and circumstances. It applies to all professions, doctors, nurses, social workers, occupational therapists, healthcare assistants, and community support staff.

This policy applies to all trustees, employees, and volunteers of Age UK Exeter and should be read in conjunction with our Safeguarding Policy, Data Protection Policy, and Confidentiality Policy.

2. Definitions

Mental Capacity- The ability to make a decision about a particular matter at the time the decision needs to be made.

Best interests- Any decision made, or anything done for a person who lacks capacity to make specific decisions, must be in the person's best interests.

Decision-maker- Under the MCA, many different people may be required to make decisions or act on behalf of someone who lacks capacity to make decisions for themselves.

Lasting Powers of Attorney (LPA)- Individuals can have a Lasting Power of Attorney who is legally appointed to make best interest decisions about finance and/or welfare. The LPA must be registered with the Office of the Public Guardian before it is active.

Two stage test of capacity- Refers to sections two and three of the MCA and refers to whether or not a person has capacity to make a decision for themselves at that time.

(More definitions can be found on page 280 of the [MCA Code of Practice](#))

3. Principles of the Mental Capacity Act

These five principles are enshrined in law and are the foundation of the MCA. The MCA says that:

- A person must be assumed to have capacity unless it is proved otherwise. This is the key principle of the MCA and the starting point for any work with individuals.
- A person is not to be treated as unable to make a decision unless all practical steps to help them to do so have been taken without success. Practical steps

may include (but are not limited to) attention to language, sensory impairments, time of day, health, different communication methods or technical difficulties.

- A person must not be treated as unable to make a decision merely because they make an unwise decision. Everyone has the right to take risks or make what another may deem unwise decisions.
- An act done, or decision made, under the Act for, or on behalf of, a person who lacks capacity must be done, or made, in their best interests. Any decision taken in an individual's best interest must be done as part of a structured decision-making process.
- Before the decision is made, regard must be given to whether the purpose for which it is needed could be as effectively achieved in a way that is less restrictive of the person's rights and freedoms. If the least restrictive option is not viable, then the **less** restrictive option must be taken.

4. Responsibilities

All trustees, staff, and volunteers are responsible for complying with this policy and in doing so the MCA Code of Practice, thus upholding the rights of all older people Age UK Exeter supports.

The Chief Executive Officer and individual service managers are responsible for and will advise on;

- Implementing this policy and procedure.
- Ensuring that MCA principles are embedded into practice.
- Ensuring staff and volunteers are trained and/or informed of mental capacity principles in proportion to its relevance to their activities with Age UK Exeter.
- Best Interests Decisions.

5. Assessing Mental Capacity

The MCA sets out a 2-stage test of capacity:

1) Does the person have an impairment of their mind or brain, whether as a result of an illness, or external factors such as alcohol or drug use?

2) Does the impairment mean the person is unable to make a specific decision when they need to? People can lack capacity to make some decisions but have capacity to make others. Mental capacity can also fluctuate with time – someone may lack capacity at one point in time but may be able to make the same decision at a later point in time.

It must be noted that capacity is decision and time specific. If a decision is not urgent, it may be that the person will have capacity to make the decision at another point in time.

Where appropriate, people should be allowed the time and be helped to make a decision themselves.

6. Consent and mental capacity

The MCA applies to adults aged 16 and over. The Children Act (1989) relates to anyone younger than 16 years.

You must have reasonable belief that the individual lacks mental capacity to have legal protection under the MCA for making decisions on a person's behalf. To have reasonable belief, you must take the two-stage test listed above to establish that the person lacks mental capacity to make a decision or consent to an act at the time the decision or consent is needed. You must establish, and be able to show, that the decision or act is in the person's best interests. If the decision to be made is complex or may have serious consequences or, if there is disagreement about a person's capacity, or a safeguarding issue, then there may be times when you need to involve other professionals and colleagues in discussions around a mental capacity assessment and/or best interests' decision.

If a relative or carer is making a best interests decision on behalf of their loved one or client, a record of this decision must be kept on the client's electronic file. Documentation is key. The relative/carer may cite other professionals advice that gives weight to the decision and all this should be documented. It must be noted that if a relative/carer makes a best interests decision for their loved one, this absolves Age UK Exeter from responsibility. Please see scenario's below.

In most circumstances, Age UK Exeter's General Data Consent Form will be used to obtain consent. A relative, carer, trusted individual or Age UK Exeter member of staff can assist with this if they are comfortable the client has capacity. The form can be marked as a signature in any way that authorises consent and denotes understanding. If written consent is deemed impossible to obtain, verbal consent can be taken as long as a clear record of the decision is kept on the client's file. If a client is deemed to temporarily have lost capacity, a decision of what service to offer or what signposting to suggest may be able to be delayed to another point in time.

7. Helping people make their own decisions

Before deciding a person lacks capacity, it's important to take steps to enable them to try to make the decision themselves.

Things to consider may be:

- does the person have all the information they need?
- have they been given information on any alternatives?
- could information be explained or presented in a way that's easier for them to understand?
- have different methods of communication been explored, such as non-verbal communication?
- could anyone else help with communication, such as a family member, carer, or advocate?

- are there particular times of day when the person's understanding is better?
- are there particular locations where the person may feel more at ease?
- could the decision be delayed until they might be better able to make the decision?

8. Using the best interest's principle

If someone lacks the capacity to make a decision at the given time and a decision must be made for them to receive a service, the MCA states that the decision must be made in the person's best interests. The person who has to make the decision is known as the 'decision-maker' and normally will be the carer responsible for the day-to-day care, or a professional such as a support worker or manager where decisions about service delivery need to be made. The MCA sets out a checklist to consider when deciding what's in a person's best interests.

It says you should:

- encourage participation
- identify all the relevant circumstances – try to think of the things the individual lacking capacity would take into account if they were making the decision themselves
- find out the person's views – including their past and present wishes and any beliefs or values
- avoid discrimination – do not make assumptions based on age, appearance, condition or behaviour
- assess whether the person might regain capacity – if they might, could the decision be postponed?
- consult with others for their views about the person's best interests.

In particular, try to consult:

- anyone previously named by the individual
- anyone caring for them
- close relatives and friends
- any attorney appointed under a Lasting Power of Attorney or Enduring Power of Attorney
- any deputy appointed by the Court of Protection to make decisions for the individual.

9. The least restrictive option

Before offering a service to an individual who lacks capacity, staff should consider whether something else could be done that would interfere less with their basic rights and freedoms. This is called finding the 'least restrictive alternative'. Where there is more than one option, it is important to explore possibilities with the relative/carer.

Age UK Exeter's services are supportive and inclusive and are therefore often likely to be the least restrictive option.

10. Advance Statements and Decisions

An advance statement is a written statement that records a person's wishes, preferences and beliefs regarding their future care. It is not legally binding but is aimed as a guide for those who may make best interests' assessments for an individual who lacks capacity or is unable to communicate their wishes.

An advance decision (sometimes known as an advance decision to refuse treatment ADRT or a living will) is a legally binding decision that allows someone aged 18 or over, while still capable, to refuse specified medical treatment for a time in the future when they may not have capacity to do so. An advance decision must be valid and applicable to the current circumstances. If so, it is to be treated as a decision given by someone with capacity and healthcare professionals must follow its specifications. Please see our Do Not Resuscitate Requests Policy for more information.

11. Lasting Powers of Attorney

A Lasting Power of Attorney (LPA) enables another person (or people) to make decisions about an individual's health and welfare or decisions about property and financial affairs. Separate legal documents are made for each of these decisions, appointing one or more attorneys for each. An Enduring Power of Attorney (EPA) under the previous law was restricted to decisions regarding property and affairs, including financial affairs.

POA can be made at any time, by a person over the age of eighteen, who has mental capacity to do so. Both an EPA and LPA must be registered. An LPA can be registered at any time, but a personal welfare lasting power of attorney will only be effective once the person has lost capacity to make their own decisions.

12. Scenarios

Information and Advice Service: In our Information and Advice service, if a carer has no lasting power of attorney in place, unfortunately we can only signpost or give general advice.

Daycare: In our Daycare setting, if a client is deemed not able to give consent to be there, it may be that their relative/carers can consent to the service acting within the client's best interests. They may already have a medical diagnosis and mental capacity assessment in place and/or advice from a GP that gives further weight to the decision. The evidence for decision made should be documented in the client's electronic file. Additionally, notes on the client's engagement with the service should be kept and updated within 24 hours of service if the client shows any signs of anxiety or distress or other habits that make one question the best interests decision.

Hospital to Home: In the Hospital to Home Service, support from the wider team may aid what signposting is deemed in the patients' best interests in instances where consent cannot be given. All decisions/conversations of this kind should be clearly evidenced in the patients notes. Signposting to support is likely to be the least restrictive option.

Revision History

Revision date	Summary of Changes	Other Comments
Feb 2023	New policy to interpret the Mental Capacity Act for Age UK Exeter use, with collaboration with Age UK Bristol and our trustees.	